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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/241,455	02/02/1999	NIKOLAI M. KRIVITSKI		8764

23387 7590 06/25/2002

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EXAMINER

SZMAL, BRIAN SCOTT

ART UNIT	PAPER NUMBER
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3736

DATE MAILED: 06/25/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/241,455

Applicant(s)

KRIVITSKI, NIKOLAI M.

Examiner

Brian Szmaj

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 2-6,9-19 and 22-42 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 2-6,9-19 and 22-42 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

1. Prosecution on the merits of this application is reopened on claims 2-6, 9-19, 22-42 considered unpatentable for the reasons indicated below:

Claim Objections

2. Claim 16 is objected to because of the following informalities: In line 9, "of" should be deleted. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 2-5, 9-13, 15-19 and 22-42 are rejected under 35 U.S.C. 102(b) as being anticipated by Vogel et al ('110).

Vogel et al discloses a catheter having a stenosis reducing member; a port for introducing a blood property change; sensors that provide a signal as claimed; the sensors minimize wall effects; a controller for calculating the flow rate; the port and sensors are spaced apart; the sensors are rotated to optimize the position; the volume of the indicator is a constant infusion; and the stenosis reducing procedure includes angioplasty. See Column 8, lines 24-66; and Column 9, lines 5-47.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vogel et al ('110) as applied to claims 9 and 34 above, and further in view of Alt et al ('234).

Vogel et al, as discussed above discloses a blood property sensing catheter, but fails to disclose the use of a heat sink to alter the property of the blood.

Alt et al discloses the use of a heat sink, namely the application of a cryogenic fluid to decrease the temperature of the blood. See Column 6, lines 52-68; and Column 7, lines 1-12.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device of Alt et al to measure blood flow as, for example, illustrated and disclosed in Vogel et al in order to measure blood flow. Alternatively, it would have been obvious to calculate the blood flow rate of the device of Alt et al by configuring the controller (34 in Alt et al) to measure the blood flow according to the teachings of Vogel et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Brian Szmaj whose telephone number is (703) 308-

Application/Control Number: 09/241,455

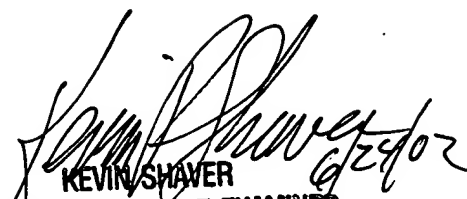
Page 4

Art Unit: 3736

3737, and group fax number is (703) 308-0758. The examiner can normally be reached on Monday-Friday, with second Fridays off.

BS

June 20, 2002


KEVIN SHAVER
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700